Sprint

Craig D. Dingwall
Director State Regulatory

State Regulatory/Northeast
401 9th Street, Northwest, Suite 400
Washington, D.C. 20004
Voice 202 585 1936
Fax 202 585 1894
craig.d.dingwall@mail.sprint.com

VIA E-MAIL AND FEDERAL EXPRESS

April 15, 2004

Mary L. Cottrell, Secretary
Department of Telecommunications & Energy
Commonwealth of Massachusetts
One South Station, Fl. 2
Boston, Massachusetts 02110

Re: D.T.E. 04-33: Verizon Consolidated Arbitration

Dear Ms. Cottrell:

Attached are the original and eight (8) copies of the signed, corrected copy of the Procedural Arbitration Decision that I sent to the Department with my letter dated April 9, 2004. The arbitrator assigned to Verizon-Rhode Island's arbitration petition issued this corrected version of the Decision on April 9, 2004. With the exception of corrected typos, the two documents are substantively the same. Thank you.

Very truly yours,

Craig D. Dingwall

cc: Tina W. Chin, Hearing Officer
Michael Isenberg, Director, Telecommunications Division
April Mulqueen, Assistant Director
Paula Foley, Assistant General Counsel
D.T.E. 04-33 Service List

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: PETITION OF VERIZON-RHODE ISLAND	:	
FOR ARBITRATION OF AN AMENDMENT TO	:	
INTERCONNECTION AGREEMENTS WITH	:	DOCKET NO. 3588
COMPETITIVE LOCAL EXCHANGE CARRIERS	:	
AND COMMERCIAL MOBILE RADIO SERVICE	:	
PROVIDERS IN RHODE ISLAND TO IMPLEMENT	:	
THE TRIENNIAL REVIEW ORDER	:	

PROCEDURAL ARBITRATION DECISION

On February 23, 2004, Verizon-Rhode Island ("VZ-RI") filed a petition for arbitration to amend interconnection agreements ("ICAs") between VZ-RI and competitive local exchange carriers ("CLECs") and between VZ-RI and commercial mobile radio service providers ("wireless carriers") in Rhode Island. VZ-RI claimed that the proposed amendments would implement changes in VZ-RI's network unbundling obligations promulgated in the FCC's Triennial Review Order ("TRO"). VZ-RI's proposed amendments change specific terms and conditions; impose general conditions; contain a glossary; change obligations as to loops, subloops, circuit switching, signaling/databases and interoffice facilities; and clarified requirements related to providing combined unbundled network elements ("UNEs"), routine network modifications and non-conforming facilities.

Various CLECs filed answers to VZ-RI's petition for arbitration on March 15, 2004 and March 16, 2004. These CLECs were AT&T, MCI, Sprint, Conversent and two coalitions of CLECs that both referred to themselves as the Competitive Carrier Coalition. ("CCC").[1] Sprint and the Swidler CCC filed separate motions to dismiss VZ-

[1] In order to avoid confusion, the CCC represented by the law firm of Adler, Pollock & Sheehan will be referred to as the "Adler CCC" while the CCC represented by the law firm of Swidler, Berlin, Shereff,

RI's request for arbitration. Essentially, Sprint and the Swidler CCC made jointly or separately six arguments in favor of dismissing VZ-RI's petition. The arguments are as follows: (1) a recent decision by the D.C. Circuit Court of Appeals[2] has reversed or remanded portions of the TRO rendering an arbitration regarding ICA amendments to implement the TRO a waste of administrative resources; (2) VZ-RI did not comply with the procedural requirements of Section 252 of the Telecommunications Act of 1996 ("Act") or this Commission's Arbitration Rules regarding ICA arbitrations; (3) VZ-RI failed to negotiate in good faith with Sprint; (4) VZ-RI failed to comply with the change of law provisions contained in Sprint's ICA with VZ-RI; (5) the TRO does not constitute an effective change of law because the FCC's approval of the Bell Atlantic/GTE merger requires VZ to continue to provide current UNEs until the date of a final, non-appealable judicial decision regarding UNEs; and (6) the amendments relating to the terms and rates for VZ-RI's routine network modifications should be dismissed because the TRO only clarified that VZ-RI is currently required to make these modifications, and argued that VZ-RI's current TELRIC rates compensate VZ-RI for these modifications. On March 31, 2004, the Adler CCC, Conversent, and AT&T agreed with Swidler CCC's motion to dismiss as it pertains to VZ-RI's routine network modifications. Also, Sprint, Conversent and AT&T agreed with Swidler CCC's motion to dismiss as it pertains to VZ-RI's obligation under the FCC's Bell Atlantic/GTE Merger Order. However, AT&T requested to move forward as to other issues and MCI opposed Swidler CCC's motion to dismiss.

Friedman will be referred to as the "Swidler CCC." In addition, Verizon Wireless stated it would be soon filing a stipulation of dismissal. Also, RNK Telecom indicated their desire to participate in the arbitration.

[2] United States Telecom Ass'n v. FCC, Case No. 00-1012 (D.C. Circuit March 2, 2004).

On March 22 and 26, 2004, VZ-RI filed responses in opposition to Sprint and the Swidler CCC's motions to dismiss. In response to the arguments of Sprint and the Swidler CCC, VZ-RI argued as follows: (1) many aspects of the TRO were affirmed by the D.C. Circuit Court of Appeals; (2) to the extent VZ-RI did not comply with the procedural requirements of an arbitration, VZ-RI noted that this is a unique industry-wide proceeding required by the TRO and dismissal would be too draconian a remedy; (3) VZ-RI did not purposefully avoid meaningful discussion of Sprint's proposals and dismissal of the arbitration as to Sprint would be inefficient because there will be consolidated arbitration as to other CLECs; (4) the TRO mandates an arbitration pursuant to Section 252 of the Act timetable even if an ICA contains a change of law provision; (5) the Bell Atlantic/GTE merger condition relating to continuing UNEs expired on July 2003, did not apply to an appeal from the TRO, and was superseded by the TRO itself; and (6) changes in FCC's rules regarding routine network maintenance requires changes to ICAs.

On March 30, 2004, the Swidler CCC responded to VZ-RI's opposition to its motion to dismiss. The Swidler CCC argued that the July 2003 sunset provision does not apply to UNE obligations and that the TRO did not specifically address the Bell Atlantic/ GTE merger issue. It noted that of the Regional Bell Operating Companies ("RBOCs"), only VZ is seeking to arbitrate a TRO amendment at this time. VZ-RI filed an additional response on April 5, 2004 clarifying its arguments.

On March 26, 2004, at the request of the Arbitrator, VZ-RI filed revisions to its ICA Amendment to reflect the D.C. Circuit's decision to reverse or remand various portions of the TRO. On April 5, 2004, AT&T filed a motion to dismiss or strike VZ-

RI's revisions to the ICA to reflect the recent D.C. Circuit decision. AT&T argued that the D. C. Circuit Court's decision will not go into effect until May 2004 and, therefore it is not applicable law. Also, AT&T argued VZ-RI must comply with the change of law provision of its ICA. On April 7, 2004, VZ-RI filed a response opposing AT&T's motion to strike or dismiss the updated TRO amendments.

ARBITRATOR'S FINDINGS

The Telecommunications Act of 1996 was passed by Congress to promote competition and reduce regulation. Instead, it has increased the work of regulators and encouraged attorneys in offering differing interpretations. As noted by Justice Scalia, this legislation "is in many respects a model of ambiguity or indeed even self-contradiction".[3] Congress' attempt to replace predictable state regulation of local telephone monopolies with federally mandated local telephone competition has created chaos in the regulatory universe. According to Hesiod, the ancient Greek poet, in the beginning was Chaos, which in turn gave birth to, among other things, the Underworld, where some mortals are tormented for eternity.[4] VZ-RI's petition for arbitration to implement the FCC's TRO in the ICA is an invitation to this Arbitrator and Commission to enter this underworld. Numerous CLECs have urged this Arbitrator to deny VZ-RI's petition for arbitration and not undertake this odyssey into the underworld. This Arbitrator will accept this invitation but only for the brief tour that clever Ulysses experienced.[5]

The CLECs raised six arguments in support of dismissing VZ-RI's petition for arbitration. The first issue to be considered is the failure to negotiate in good faith raised by Sprint only. The duty to negotiate in good faith in relation to ICAs is explicit under

[3] AT&T v. Iowa Utilities Bd., 525 U.S. 366 (1999).
[4] Hesiod, Theogony, verses 116-123.
[5] Homer, The Odyssey, Book XI.

Section 251 and Section 252 of the Act and the Commission's Arbitration Rule 3(f). Sprint has submitted a sworn affidavit from John Weyforth, a Sprint employee, stating that on October 29, 2003, Sprint made proposed revisions to VZ-RI's TRO amendments to its ICA and that as of March 9, 2004, VZ had neither accepted nor rejected Sprint's proposed revisions.[6] Furthermore, it appears VZ waited until February 12, 2004, about ten days before the filing of the petition, to have a detailed conference call with Sprint to discuss Sprint's proposed revisions and even then, VZ's representatives indicated they needed to speak to "higher attorneys".

VZ-RI acknowledged that Sprint did respond to VZ's request for ICA negotiations but that VZ did not purposefully avoid meaningful discussion with Sprint. Instead, VZ claims it rejected Sprint's changes, but has not provided any documentation indicating that it formally rejected Sprint's proposed revisions to the TRO amendments. Further, VZ indicated it "may disagree with the particulars of Sprint's account of the parties' discussion with respect to the TRO amendment."[7]

Based on the pleadings, Sprint has made a prima facie case that VZ did not make a good faith effort in negotiating with Sprint. VZ-RI failed to rebut Sprint's prima facie case because it can not categorically deny Sprint's factual assertions but can only state it "may disagree with the particulars" of Sprint's affidavit. It is quite possible that VZ-RI has formally rejected Sprint's proposed revisions, but it may have done so only after the petition was filed. This is <u>not</u> a good faith effort to negotiate. When a party fails to make a sufficient effort to negotiate and resolve issues prior to arbitration, it is a disservice to

[6] Sprint's Motion to Dismiss, Attachment 1 (Affidavit).
[7] VZ-RI's Response to Sprint's Motion to Dismiss, p. 6.

the CLEC and the Arbitrator because it requires all to address issues that could possibly have been resolved before going to arbitration.

VZ-RI raises the counter-argument that if Sprint is dismissed then it would have to re-initiate negotiations with Sprint later or have a separate arbitration for Sprint. Accordingly, VZ-RI indicated it would be more efficient to conduct a consolidated arbitration which includes Sprint. VZ-RI raises a legitimate concern. Assuming the arbitration proceeds, VZ-RI fails to recognize that a separate arbitration for Sprint may never occur because Sprint could simply request the ICA terms and conditions that arise from this arbitration. In other words, Sprint can focus its resources on negotiating with VZ while VZ can arbitrate with the other CLECs and negotiate with Sprint separately. Once an arbitration decision is reached, Sprint could accept the ICA arising from the arbitration decision instead of pursuing arbitration for itself. This approach is less efficient for VZ-RI, but it is more efficient for Sprint and probably will have no impact on the Arbitrator and/or Commission's time and resources. VZ should not be rewarded for the negotiating tactics it apparently used with Sprint. A duty to make a good faith effort to negotiate precedes a right to arbitration. VZ-RI can not "skip a step" because it would be more efficient for it to arbitrate with all CLECs all at once rather than negotiate with individual CLECs. Accordingly, Sprint's motion to dismiss as to VZ-RI's petition to arbitrate with Sprint is granted. VZ-RI is directed to reinitiate negotiations with Sprint.[8]

The Arbitrator will now consider the arguments raised by the Swidler CCC in its motion to dismiss. The first issue is the effect of the recent D.C. Circuit Court decision

[8] The Arbitrator will consider any other motions to dismiss by any CLEC in this proceeding on the basis of lack of good faith negotiation by VZ if the CLEC can present evidence that rises to the level Sprint has presented.

on the issues subject to this arbitration. The Swidler CCC is correct that portions of the TRO has been remanded and could soon be vacated. This Commission, at the request of VZ-RI, has already stayed further proceedings in the TRO docket due to the recent D.C. Circuit decision.[9] However, VZ-RI has correctly noted that certain portions of the FCC's TRO were affirmed by the D.C. Circuit.[10] Therefore, the Arbitrator and the Commission could proceed to change in ICAs in order to effectuate those portions of the TRO that will not soon be vacated by the D.C. Circuit. The Commission stayed its TRO proceedings because they pertained to aspects of the TRO that were reversed and remanded to the FCC. The Swidler CCC raised a valid concern that this ICA arbitration would be conducted on a piecemeal basis and with a fog of legal uncertainty surrounding it. Unfortunately, the status of telecommunications law is normally uncertain. Because a portion of the FCC's TRO has not been reversed, it is the law and needs to be implemented.

AT&T has made a motion to dismiss or strike VZ-RI's updated TRO amendments. AT&T's motion to strike is moot because the Arbitrator, sua sponte, will now strike VZ-RI's updated TRO amendments. AT&T argues that the updated TRO amendments are not ripe because the D.C. Circuit Court's vacatur is not in effect. Technically, AT&T is correct. However, the recently adopted Commission policy is not to attempt to implement law that will shortly be void.[11] It would be silly and an extremely inefficient use of resources to implement a law that will soon become invalid. AT&T also argues that these updated TRO amendments do not comply with the change of law provisions of its ICA. This argument is similar in some respects to one of Sprint's

[9] Order No. 17790, pp. 5-6.
[10] VZ-RI's Opp. to Swidler CCC's Motion to Dismiss, p. 9.
[11] Order No. 17990, pp. 5-6.

arguments for dismissal based on failure to conform with change of law provisions of its ICA. This argument is not persuasive. It appears that the FCC's TRO indicated that an ICA arbitration is appropriate "even in instances where a change of law provision exists."[12] Therefore, an ICA arbitration can be a forum to implement a change of law provision. Also, AT&T has misunderstood the purpose of an updated TRO amendment. An updated TRO amendment would not constitute a change of law triggered by the recent D.C. Circuit decision. Instead, it would merely not implement the change of law made by the FCC's TRO relating to issues recently reversed, remanded and soon to be vacated by the D.C. Circuit.

Unfortunately, VZ-RI seems to have also misunderstood the purpose of the updated TRO amendments. The purpose of the updated TRO amendments are not to add "a simple adjective" such as "conditional". Also, it is not to recognize a specific "obligation to provide mass market switching—even though the D. C. Circuit's vacatur of the TRO would remove the obligation."[13] VZ-RI requested that the Commission not engage in a TRO proceeding on issues reversed and remanded back to the FCC such as mass market switching. Now, VZ-RI is asking the Arbitrator to implement changes of law through an arbitration relating to issues reversed and remanded back to the FCC. The inconsistency is audacious. Possibly, VZ-RI misunderstood the Arbitrator's request at the procedural conference. VZ tends to prefer directions from this Commission to be written. Accordingly, VZ-RI is directed to file, by April 15, 2004, updated TRO amendments to ICAs which remove from consideration in this arbitration any definition,

[12] FCC's TRO, paragraph 704.
[13] VZ-RI's Opp. to AT&T's Motion to Strike, p. 2.

condition, or transition relating to concepts or obligations such as mass market switching that was reversed, remanded and soon to be vacated by the D.C. Circuit.

A review of the final paragraphs of the D.C. Circuit's decision indicates that the following have been remanded and will soon be vacated: the impairment of mass market switching and dedicated transport (DS1, DS3, and dark fiber), the impairment of dedicated transport for wireless carriers, and the distinction between qualifying and non-qualifying services. Accordingly, consistent with the stay in Docket No. 3550, this Arbitrator will not consider any issues related to these reversed, remanded and soon to be vacated decisions. Since the FCC is now considering these issues, the definitions, conditions and transitions related to these issues are likely to change. It is an immense waste of resources to arbitrate obligations likely to be changed by the FCC. Of course, the Arbitrator would include these remanded issues in this arbitration at a later date if there is a significant change in circumstances such as new guidance from the FCC, or if the D. C. Circuit decision is reversed or indefinitely stayed.

VZ-RI, AT&T, and MCI, among others, may want to proceed to implement changes to their ICA agreements to reflect reversed, remanded and soon to be vacated provisions of the FCC's TRO by claiming a right to arbitration. They can do so either through arbitration in other states where those commissions are going forward with TRO proceedings or they may make strenuous efforts to compromise through negotiation. Their right to arbitration in this state on these issues is not ripe and is contrary to the principle of judicial economy. Once some of the parties have agreed to TRO amendments reached either through negotiation or ordered by arbitration in another state, the parties can file the ICA with this Commission for approval. What these certain

parties will not be permitted to do is to expend the Arbitrator and/or Commission's time in arbitrating ICA amendments based on speculative, hypothetical or fanciful discussions as to what the FCC or the courts will do. The Arbitrator will take a pass on joining this metaphysical discussion group.

To further clarify, the current terms of ICAs with CLECs for which VZ-RI has petitioned for arbitration can continue in effect as written in regards to those issues reversed, remanded and soon to be vacated by the D.C. Circuit Court.[14] In other words, the status quo prevails. This is consistent with the Commission's recent order in the TRO docket.[15] Accordingly, the Swidler CCC's motion to dismiss as it relates to the D.C. Circuit decision is granted as to any issue reversed, remanded and soon to be vacated by the D.C. Circuit Court. This ruling applies to this arbitration with all CLECs in this docket. By April 15, 2004, VZ-RI is to update its petition in conformance with the instructions above as they relate to the recent D. C. Circuit decision. Failure to comply will result in an automatic stay of further proceedings in this arbitration.

The next issue raised by Swidler CCC's motion to dismiss relates to VZ-RI's request to include the subject of routine network modifications in its petition for arbitration. VZ-RI argues that the TRO effected a change of law by requiring VZ to make routine network modifications. Furthermore, VZ-RI argued that it is not properly compensated at current TELRIC rates to provide these routine network modifications.[16]

VZ-RI is incorrect as to its first argument. The FCC did not impose a new obligation on VZ-RI to undertake routine network modifications for CLECs. It merely

---

[14] Of course, a few changes to terms and conditions may be necessary. For instance, the terms and conditions related to switching will need to be altered in order to implement the D.C. Circuit's affirmation of the TRO's elimination of enterprise switching as a UNE under Section 251 of the Act.
[15] Order No. 17990, p. 7.
[16] VZ-RI's Reply in Opp. to the Swidler CCC's Motion to Dismiss, pp. 8-9.

resolved the controversy as to whether VZ-RI had to perform routine network modifications for CLECs and then adopted rules to clarify exactly what constituted a routine network modification and associated obligations. If the TRO really did constitute a change of law and created a completely new legal obligation for VZ-RI, the question must be asked as to why, for so many years, did VZ-RI make routine network modifications at TELRIC rates? As noted by Conversent, prior to May 2001, VZ-RI routinely provisioned Conversent's DS1 loops at existing TELRIC rates whenever such routine modifications to existing VZ facilities was necessary. Only after May 2001, VZ-RI began rejecting Conversent's DS1 orders on the basis of "no facilities". In the Rhode Island Section 271 proceeding, this issue was raised by Conversent. However, VZ-RI agreed to provide these services initially at a special access rate and then convert the rates to TELRIC rates at a later date.[17] VZ-RI made routine network modifications at TELRIC rates for many years. Undoubtedly, VZ-RI performed these tasks because of some legal obligation under federal or state law whether it be in ICAs, tariffs, regulatory orders or statutes. VZ-RI is an aggressive competitor; it would not provision wholesale services merely out of compassion for unfortunate, little CLECs. The FCC's TRO by its language, and as exhibited by VZ-RI's conduct over the years, did not create a new legal obligation for VZ-RI to perform but merely clarified an old pre-existing obligation. Accordingly, there is no need to alter the current terms and conditions in ICAs, as they relate to VZ-RI's obligation to perform routine network modifications for CLECs at TELRIC rates because VZ-RI is already required under ICAs to provide UNEs at TELRIC rates.

[17] Conversent's Answer, pp. 25-26; Conversent's Comments, p. 10; and Order No. 16815, pp. 129-132, 135-136.

As a result, the real issue of routine network modifications is one of price. St. Paul once declared that the love of money is the root of all evil.[18] He certainly was not exaggerating when it comes to litigation related to TELRIC pricing. VZ-RI claims that the TRO allows VZ-RI to obtain cost recovery of routine network modifications through TELRIC rates and that VZ-RI's current TELRIC rates do not cover the costs of these modifications. As expected, the CLECs argue to the contrary. At the outset, the Arbitrator must address VZ-RI's argument that this issue is inappropriate for a motion to dismiss, but instead must be resolved during the course of the proceeding.[19] In general a motion to dismiss can be considered the equivalent of a motion to dismiss in civil procedure under Rule 12(b)(6) for failure to state a claim upon which relief can be granted. In this instance, the Arbitrator can not make a finding that VZ-RI lacks a basis to claim that VZ-RI's current TELRIC rates do not recover the costs associated with routine network modifications. However, the Arbitrator will note that VZ-RI's current TELRIC rates were based on interim UNE rates adopted by the Commission on August 18, 1999, and that these UNE rates were the result of a settlement entered into between VZ-RI and the Division of Public Utilities and Carriers ("Division"), which was supported to some extent by Conversent.[20] Subsequent to the settlement, until May 2001, it appears VZ-RI provided these routine network modifications at TELRIC rates to CLECs such as Conversent without any indication that these TELRIC rates did not compensate VZ-RI for these routine network modifications.

In any case, the motion to dismiss is not appropriate under the equivalent of a Rule 12(b)(6) motion but it would be appropriate under the equivalent of a Rule 12(b)(1),

[18] I Timothy, Ch. 6, verse 10.
[19] VZ-RI's Opp. to Swidler CCC's Motion to Dismiss, p. 5, fn. 5.
[20] Order No. 15976 and Order No. 16815, p. 43.

or 12(b)(3) motion for dismissal based on lack of subject matter jurisdiction or improper venue. This type of argument was implicitly raised by Conversent when it indicated that the issue of whether the current TELRIC rates adequately cover routine network modifications should not be considered in this arbitration proceeding but in the TELRIC proceeding in Docket No. 2681.[21] Conversent is procedurally correct. This is a pricing issue that is more appropriate for VZ-RI to raise in Docket No. 2681 for various reasons. First, the Division is not a party to this arbitration and their participation and view as to whether current TELRIC rates were intended to compensate VZ-RI for routine network modification is an important consideration.[22] Second, the Division has always participated in TELRIC rate setting proceedings.[23] Third, in a past arbitration, this Commission has affirmed this Arbitrator's decision to deny VZ-RI's request to alter the status quo for intercarrier compensation in an arbitration because of the need for Division participation.[24] Fourth, even if VZ-RI were correct that current TELRIC rates do not compensate VZ-RI for routine network modifications, it is highly inefficient and awkward to conduct a mini-TELRIC proceeding in an arbitration to set new rates for routine network modifications.

Possibly, VZ-RI does not see the inconsistency of conducting a mini-TELRIC proceeding in an arbitration to implement the TRO after requesting and obtaining a stay from the Commission in the TELRIC proceeding on the basis of the uncertainty created by the TRO.[25] Maybe VZ-RI is not troubled by adopting an inconsistent position, but the

---

[21] Conversent's Comments, p. 11.
[22] Order No. 17524, pp. 75-78. In this order, the Commission indicated various principles it follows in interpreting a settlement agreement such as intent and conduct of the settling parties.
[23] Accordingly, the Swidler CCC's motion to dismiss would be appropriate under the equivalent of a Rule 12(b)(7) motion for failure to join an indispensable party.
[24] Order No. 17193, pp. 25-26.
[25] Order No. 17990, pp. 2, 6-7.

Arbitrator is. The Commission has stayed the fires of the TELRIC proceeding and this Arbitrator will not reignite it. It is also consistent with maintaining the policy of the status quo.[26] Accordingly, the Swidler CCC's motion to dismiss as it relates to routine network modifications is granted on the basis that the appropriate forum for this issue is the TELRIC proceeding in Docket No. 2681. This ruling applies to all CLECs in this arbitration. The current ICAs already require VZ-RI to provide UNEs such as routine network modifications at TELRIC rates. VZ-RI is directed to file revised TRO amendments to ICAs so as to eliminate any discussion of routine network modifications. VZ-RI is not precluded from raising the issue of routine network modifications in Docket No. 2681 or asking the Commission to lift its stay in the TELRIC docket immediately.

The next issue to be addressed is whether the FCC's conditions imposed on VZ as a result of the Bell Atlantic/GTE merger precludes VZ from terminating UNE obligations until the FCC's TRO is final and not subject to further appeals. If the merger conditions preclude VZ from terminating UNEs because the TRO is still subject to appeal, then this arbitration is not ripe. This argument requires the Arbitrator, a mere state employee, to interpret and define the meaning behind the mysterious words of the FCC.

The Swidler CCC suggested that this arbitration be held in abeyance until VZ obtains clarification from the FCC as to whether the Bell Atlantic/GTE merger conditions for UNEs are still in effect. This is a very reasonable approach, but begs the question as to why the Swidler CCC or other CLECs themselves have not sought clarification from the FCC on this issue since the request for ICA negotiations was sent by VZ in October 2003. The law firm representing the Swidler CCC is in Washington, D.C. and could just as easily as VZ have filed a request for clarification. If the Swidler CCC is correct

[26] Id., p. 7.

regarding its interpretation of the Bell Atlantic/GTE Merger Order, it is understandable why VZ would not have sought clarification from the FCC. However, if the Swidler CCC believed its interpretation is correct, it should have requested a clarification from the FCC thereby ending ICA arbitrations across the nation and leaving only one proceeding at the FCC. There are two possible reasons the CLECs did not request clarification from the FCC: either they stubbornly believed that the burden is on VZ to request clarification or they feared that the FCC's clarification would favor VZ. In any case, the Arbitrator urges any party to seek clarification from the FCC on this issue.

The question now before the arbitrator is whether to proceed with the arbitration based on the best legal interpretation of the FCC's orders this Arbitrator can make. The FCC's Bell Atlantic/GTE Merger Order indicated that:

> In order to reduce uncertainty to competing carriers from litigation that may arise in response to our orders in the UNE Remand and Line Sharing proceedings, from now until the date on which the Commission's orders in those proceedings, and any subsequent proceedings, become final and non-appealable, Bell Atlantic and GTE will continue to make available to telecommunications carriers, in accordance with those orders, each UNE and combination of UNEs that is required under those orders, until the date of any final and non-appealable judicial decision that determines that Bell Atlantic/GTE is not required to provide the UNEs or combination of UNEs in all or a portion of its operating territory. This condition only would have practical effect in the event that our rules adopted in the UNE Remand and Line Sharing proceedings are stayed or vacated. Compliance with this condition includes pricing these UNEs at cost-based rates in accordance with the forward looking cost methodology first articulated by the Commission in the Local Competition Order, until the date of any final and non-appealable judicial decision that determines that Bell Atlantic/GTE is not required to provide such UNEs at cost-based rates.[27]

The CLECs note that the TRO is an outgrowth of the remands by the D.C. Circuit relating to the FCC's UNE Remand and Line Sharing Orders. As a result, the CLECs argue that since the TRO constitutes a subsequent proceeding and the TRO is still subject

[27] Bell Atlantic/GTE Merger Order, para. 316

to appeal, VZ is required to provide UNEs pursuant to the Bell Atlantic/GTE Merger Order regardless of Section 251 of the Act until the TRO is no longer subject to appeal. Accordingly, the CLECs argue that VZ-RI's petition for arbitration is not ripe.[28] On its face this is a very persuasive argument but VZ-RI responded with essentially three arguments of its own.

First, VZ-RI seems to argue that the TRO was not a subsequent proceeding relating to the UNE Remand and Line Sharing orders, and therefore, the merger condition is not applicable. In support of this argument VZ-RI cites a letter from an FCC staffer indicating that the Bell Atlantic/GTE merger condition in Paragraph 316 of the Bell Atlantic/GTE Merger Order requiring VZ to provide UNEs at TELRIC rates would end upon an adverse final decision by the U.S. Supreme Court on the FCC's Order establishing TELRIC pricing for UNEs and not continue if it was remanded. VZ seems to argue that because the FCC has interpreted VZ's obligation to provide TELRIC prices under Paragraph 316 would not continue through subsequent proceedings after a remand then it must also hold true that VZ's obligation to provide UNEs under Paragraph 316 would not continue through subsequent proceedings after a remand.[29] VZ-RI's analysis is not correct.

The FCC staffer indicated that VZ's merger obligation to provide TELRIC pricing would end upon an adverse final decision by the U.S. Supreme Court on the Local Competition Order. This was accurate because the last sentence of Paragraph 316 in the Bell Atlantic/GTE Merger Order did not contain the additional condition of

[28] Swidler CCC's Motion to Dismiss, pp. 2-6.
[29] VZ-RI's Opp. to Swidler CCC's motion, pp. 3-4.

"subsequent proceedings" in regards to TELRIC pricing.[30] The relevant sentence states: "Compliance with this condition includes pricing these UNEs at cost-based rates in accordance with the forward looking cost methodology first articulated by the Commission in the Local Competition Order, until the date of any final and non-appealable judicial decision that determines that Bell Atlantic/GTE is not required to provide such UNEs at cost-based rates."[31] It is clear from the language of Paragraph 316 that the additional "subsequent proceedings" condition only applied to the requirement that VZ provide UNEs and not the requirement that VZ provide them at TELRIC rates. Therefore, the FCC staffer carefully advised VZ that the TELRIC pricing obligation based on the merger condition would cease upon an adverse final decision by the Supreme Court on the TELRIC pricing issue arising from the Local Competition Order. The merger condition to provide UNEs, however, does specifically indicate "subsequent proceedings" and therefore would still be applicable through appeals from subsequent proceedings arising from the UNE Remand and Line Sharing Orders. VZ-RI's argument fails to persuade.

The second argument raised by VZ-RI is that the merger condition requiring VZ to provide UNEs until a final non-appealable order is entered in any "subsequent proceeding" arising out of the FCC's Line Sharing or UNE Remand orders sunseted in July 2003, 36 months after the Bell Atlantic/GTE merger closing date.[32] The CLECs argue that the sunset provision is inapplicable to the UNE provisioning requirement of Paragraph 316 because the sunset provision does not apply "where other termination

[30] Swidler CCC's Reply to VZ-RI's Opp., pp. 3-4.
[31] Bell Atlantic/GTE Merger Order, para. 316.
[32] VZ-RI's Opp. to Swidler CCC's Motion to Dismiss, p. 3.

dates are specifically established herein".[33] VZ-RI essentially countered that the date of a final non-appealable order arising from "subsequent proceedings" would not constitute a specific termination date under Paragraph 64 of the Bell Atlantic/GTE Merger Order, Appendix D.[34]

Essentially, Paragraph 64 indicates that the Bell Atlantic/GTE merger conditions remain in effect for 36 months after the merger closing date "except where other termination dates are specifically established herein." The clear intent of this introductory phrase is to sunset all merger conditions, with the exception of those related to Advanced Services, which do not have a specific termination date. The word "specifically" means "precise" or "definite".[35] Paragraph 316 provides that a merger condition will remain in effect until "the date" of a "final and non-appealable" judicial decision arising from "subsequent proceedings." The event referred to is specific. It is a "final and non-appealable" judicial decision. However, the "date" is not specific because the event could occur on any date. Paragraph 316 does not contain specific termination dates. Instead, it contains specific events that terminate obligations. A specific event is not analogous to a specific termination date. In Paragraph 64, the word "specifically" is clearly referring to "other termination dates". The intent of the sentence in Paragraph 64 is to continue obligations with specific termination dates and not to continue obligations beyond 36 months when future events will occur at some unknown date. If the FCC had omitted the word "specifically" in the introductory phrase of Paragraph 64 or had used the phrase "other terminating events or conditions" instead of "other termination dates" then the merger condition would remain in effect. However, the phrase in Paragraph 64

[33] Swidler CCC's Reply to VZ-RI's Opp., pp. 4-5.
[34] VZ-RI's Reply in Opp. to Swidler CCC's Motion to Dismiss, pp. 6-7.
[35] Black's Law Dictionary, (6th), p.1398.

has the word "specifically" in reference to "other termination dates". A specific future event is not a specific date. The sun has set on VZ's obligation to provide UNEs under the Bell Atlantic/GTE Merger Order. A new more uncertain day has dawned for the CLECs.

Although the Arbitrator has been persuaded by VZ-RI's second argument regarding the inapplicability of Paragraph 316 of the Bell Atlantic/GTE Merger Order, the Arbitrator will address VZ-RI's third argument. Essentially, VZ-RI argued that Paragraph 705 of the TRO implicitly repealed the requirement in Paragraph 316 of the Bell Atlantic/GTE Merger Order that VZ provide UNEs until there is a "final and non-appealable" judicial decision arising from a "subsequent proceeding".[36] Specifically, the TRO indicates that provisions allowing only for modifications to ICAs when there are "final and unappealable judicial orders" should be interpreted to encompass the TRO because otherwise, "it would be unreasonable and contrary to public policy to preserve our prior rules for months or even years pending any reconsideration or appeal of this Order."[37] According to VZ-RI, the FCC's apparent intent is that the new UNE obligations arising from the TRO become immediately effective for purposes of ICA change of law provisions instead after all appeals of the TRO are exhausted. Thus, VZ-RI seems to argue that Paragraph 316 of the Bell Atlantic/GTE Merger Order would have been implicitly repealed if it were still in effect.

Certain CLECs argue that if there is a conflict in FCC orders regarding a specific provision, such as Bell Atlantic/GTE Merger Order Paragraph 316, and a general

[36] VZ-RI's Opp. to Swidler CCC's Motion to Dismiss, pp. 4-5.
[37] TRO, paragraph 705.

provision, such as TRO Paragraph 705, the more specific provision prevails.[38] This approach to interpretation is valid. However, another equally valid approach is to give effect to the more recently approved provision and to find that the older provision was repealed by implication.[39] Therefore, even if the condition in Paragraph 316 of the Bell Atlantic/GTE Merger Order has not been sunseted by Paragraph 64, it was implicitly repealed by Paragraph 705 of the TRO. Accordingly, the Swidler CCC's Motion to dismiss as it relates to the Bell Atlantic/GTE Merger Order is denied. However, if the FCC were to render an opinion contrary to the interpretation in this decision, the Arbitrator would comply with the FCC's interpretation.

Lastly, the Swidler CCC argued for dismissal of VZ-RI's arbitration petition because of VZ-RI's failure to comply with the procedural filing requirements of Section 252 of the Act and with the Commission's Arbitration Rules. The Swidler CCC noted that the failure of VZ-RI to comply with these procedural requirements will cause the parties and the Commission to consume valuable time narrowing issues.[40] VZ-RI responded that this arbitration did comply with Section 252 and with the Commission's Arbitration Rules. To the extent VZ-RI's filing did not comply, VZ-RI maintained that the arbitration is being conducted pursuant to the TRO. Also, VZ-RI emphasized the unique circumstances of an industry-wide arbitration and stated that a dismissal was a draconian remedy.[41]

It appears that VZ-RI's filing did not strictly comply with Section 252 or with the Commission Arbitration's Rules. However, dismissal on strictly procedural grounds in

---

[38] Conversent's Comments, p. 8.
[39] Prov. Water Supply Bd. v. P.U.C., 414 A.2d 465, 466 (R.I. 1980).
[40] Swidler CCC's Motion to Dismiss, pp. 6-9.
[41] VZ-RI's Opp. to Swidler CCC's Motion to Dismiss, pp. 5-8.

circumstances that could necessitate industry-wide arbitration in ICAs is too drastic a remedy. The CLECs are correct that VZ-RI's filing failed to narrow the issues. Additionally, the filing was not presented in a manner comparable to the recent arbitration between VZ-RI and GNAPs in Rhode Island. As a result, CLECs and the Arbitrator will need to expend more time and resources in narrowing and clarifying the issues presented for arbitration. Since VZ-RI failed to strictly comply with the statutory and Commission requirements for arbitration, the Arbitrator and the Commission will not strictly comply with the statutory requirements for resolving the issues submitted to arbitration within a nine-month time frame. Instead, the Arbitrator and the Commission will conclude the arbitration within a reasonable time. Accordingly, the Swidler CCC's motion to dismiss on procedural grounds is denied without prejudice. If VZ-RI were to insist on an arbitration decision within the strict statutory mandates or in a less than reasonable time period, as defined by the Arbitrator or the Commission, this motion will be granted and will be applied to all CLECs.[42]

To summarize, Sprint's motion to dismiss, as it relates to itself, is granted on the basis that VZ failed to make a good faith effort to negotiate prior to requesting arbitration. The Swidler CCC's motion to dismiss as it relates to the recent D.C. Circuit decision is granted only to those issues that were reversed, remanded and soon to be vacated, and this ruling will be applied to all CLECs. AT&T's motion to strike VZ-RI's filing to update TRO amendments to ICAs is moot because the Arbitrator, sua sponte, struck VZ-RI's filing because it did not conform with the Arbitrator's request at the procedural conference. Accordingly, VZ-RI is required to submit, no later than April 15,

[42] Of course, VZ-RI is free to withdraw its Petition, attempt negotiations with CLECs and then refile its Petition in conformance with Section 252 of the Act and with the Commission's Rules, at which time, VZ-RI could receive a decision within the statutory time frame.

2004 updated TRO amendments to ICAs removing issues from the arbitration that were reversed, remanded and soon to be vacated by the recent D.C. Circuit decision. If VZ-RI does not timely comply with this directive to the satisfaction of the Arbitrator, the arbitration is stayed. Swidler CCC's motion to dismiss as to routine network modifications is granted and VZ-RI is required to submit, no later than April 15, 2004 updated TRO amendments to ICAs removing the proposed ICA amendments relating to routine network modifications from the arbitration. If VZ-RI does not timely comply with this directive to the satisfaction of the Arbitrator, the arbitration is stayed. Swidler CCC's motion to dismiss on the basis of the Bell Atlantic/GTE Merger Order is denied. Swidler CCC's motion to dismiss on the basis of failure to comply with procedural requirements is denied without prejudice.

For eight long years, almost as long as the legendary Trojan War, the parties have litigated issues related to UNEs. In this war of attrition there are no winners, only losers. On the issues raised so far in this arbitration, all the parties have lost on at least one issue. Instead of simply litigating through arbitration over the meaning of words, maybe the parties should make an effort to negotiate. Of course, VZ-RI can proceed with what is left of its arbitration, but in many ways the petition resembles a wounded soldier left in the middle of No Man's Land.

Accordingly, it is

(17802) ORDERED:

1. Sprint's motion to dismiss is granted.

2. Swidler CCC's motion to dismiss is granted as to those issues reversed and remanded and soon to be vacated by the recent decision in United States Telecom Ass'n v. FCC, Case No. 00-1012 (D.C. Circuit March 2, 2004).
3. AT&T's motion to strike is moot because the Arbitrator, sua sponte, struck VZ-RI's filing because it did not conform with the Arbitrator's request at the procedural conference.
4. VZ-RI must file no later than April 15, 2004, revised, proposed TRO amendments to ICAs removing issues from this arbitration relative to those TRO provisions reversed, remanded and soon to be vacated by the Court's decision in United States Telecom Ass'n v. FCC, Case No. 00-102 (D.C. Circuit March 2, 2004).
5. Swidler CCC's motion to dismiss as to routine network modifications is granted.
6. VZ-RI must file, no later than April 15, 2004, revised proposed TRO amendments to ICAs removing the issue of routine network modifications from this arbitration.
7. Failure to comply with ordering paragraphs four and six will result in an automatic stay to be entered in this arbitration.
8. Swidler CCC's motion to dismiss on the basis of the Bell Atlantic/GTE Merger Order is denied.
9. Swidler CCC's motion to dismiss on procedural grounds is denied without prejudice

10. Pursuant to Commission Rules Governing Arbitration of Interconnection Agreements, within fourteen days of issuance of this Procedural Arbitration Decision, parties may submit comments regarding this Procedural Arbitration Decision.

11. Pursuant to Commission Rules Governing Arbitration of Interconnection Agreements, within twenty-one days of issuance of this Procedural Arbitration Decision, parties may submit reply comments regarding this Procedural Arbitration Decision.

DATED AND EFFECTIVE AT WARWICK, RHODE ISLAND ON APRIL 9, 2004.

Steven Frias, Arbitrator

CERTIFICATE OF SERVICE
D.T.E. 04-33

I, Mable L. Semple, certify that I served a true copy of the attached letter dated April 15, 2004 and Procedural Arbitration Decision upon the following parties of record by first class mail, postage prepaid, or Federal Express Overnight Delivery.

Dated at Washington DC. April 15, 2004

Mary Cottrell, Secretary
Department of Telecommunications and Energy
One South Station
Boston, MA 02110
phone: (617) 305-3500
fax: (617) 345-9101
email: mary.cottrell@state.ma.us

Tina W. Chin, Hearing Officer
Department of Telecommunications and Energy
One South Station
Boston, MA 02110
phone: (617) 305-3578
fax: (617) 345-9103
email: Tina.Chin@state.ma.us

Michael Isenberg, Director, Telecommunications Division
Department of Telecommunications and Energy
One South Station
Boston, MA 02110
phone: (617) 305-3744
fax: (617) 478-2588
email: Mike.Isenberg@state.ma.us

April Mulqueen, Assistant Director, Telecommunications Division
Department of Telecommunications and Energy
One South Station
Boston, MA 02110
phone: (617) 305-3748
fax: (617) 478-2588
email: April.Mulqueen@state.ma.us

Paula Foley, Assistant General Counsel
Department of Telecommunications and Energy
One South Station
Boston, MA 02110
phone: (617) 305-3608
fax: (617) 345-9103
email: Paula.Foley@state.ma.us

Berhane Adhanom, Analyst, Telecommunications Division
Department of Telecommunications and Energy
One South Station
Boston, MA 02110
phone: (617) 305-3740
fax: (617) 478-2588
email: Berhane.Adhanom@state.ma.us

Peter Allen, Analyst, Telecommunications Division
Department of Telecommunications and Energy
One South Station
Boston, MA 02110
phone: (617) 305-3741
fax: (617) 478-2588
email: Peter.Allen@state.ma.us

Debra Conklin,Analyst, Telecommunications Division
Department of Telecommunications and Energy
One South Station
Boston, MA 02110
phone: (617) 305-3749
fax: (617) 478-2588
email: Debra.Conklin@state.ma.us

Ashish Shrestha, Analyst, Telecommunications Division
Department of Telecommunications and Energy
One South Station
Boston, MA 02110
phone: (617) 305-3743
fax: (617) 478-2588
email: Ashish.Shrestha@state.ma.us

Karlen J. Reed
Assistant Attorney General, Utilities Division
Office of the Attorney General
200 Portland Street, 4th Floor
Boston, MA 02114
phone: (617) 727-2200 ext. 3436
fax: (617) 727-1047
email: Karlen.Reed@ago.state.ma.us

Bruce P. Beausejour
Barbara Anne Sousa
Ellen M. Cummings
Verizon New England, Inc. d/b/a Verizon Massachusetts
185 Franklin Street, 13th Floor
Boston, MA 02110-1585
phone: (617) 743-7331
fax: (617) 737-0648
email: Bruce.P.Beausejour@verizon.com; Barbara.A.Sousa@verizon.com; Ellen.M.Cummings@verizon.com

Jay E. Gruber
Harry Davidow
AT&T Communications of New England, Inc.
99 Bedford Street, 4th Floor
Boston, MA 02111
phone: (617) 574-3149
fax: (617) 574-3274
email: jegruber@lga.att.com

John B. Adams
The Adams Legal Firm, LLC
Suite C-312
626 Admiral Drive
Annapolis, MD 21401
phone: (202) 448-9033
fax: (202) 448-9040
email: adamslegal@comcast.net

Andoni Economou
Leo Maese
Metropolitan Telecommunications of Massachusetts, Inc.
44 Wall Street, 6th Floor
New York, NY 10005
phone: (212) 607-2004/(212) 607-2148
fax: (212) 635-5074
email: aeconomou@mettel.net; lmaese@mettel.net

Jodi J. Caro
Vice President and General Counsel
Looking Glass Networks, Inc.
111 West 22nd Street, Suite 600
Oak Brook, IL 60523
phone: (630) 242-2015
fax: (630) 242-2001
email: jodi.caro@lglass.net

James R.J. Schetema
Director - Regulatory Affairs
Global NAPs, Inc.
5042 Durham Road West
Columbia, MD 21044-1445
phone: (617) 504-5513
fax: (617) 507-5713
email: jscheltema@gnaps.com

William J. Rooney, Fr.
Vice President and General Counsel
Global NAPs, Inc.
89 Access Road
Norwood, MA 02062
phone: (781) 551-9707
fax: (781) 551-9984
email: wrooney@gnaps.com

William E. Braun,VP & General Counsel
Dennis Kelley, Director of Operations
1-800-Reconex
2500 Industrial Drive
Hubbard, OR 97032
phone: (503) 982-5573/(503) 982-5578
fax: (503) 982-6077
email: bill.braun@reconex.com;
dennies.kelley@reconex.com

Patricia Gray, SVP, General Counsel and General Secretary
Michael Curd, VP, Technical Services
Arch Wireless Operating Company, Inc.
1800 West Park Drive, Suite 250
Westborough, MA 01581
phone: (508) 870-8853/(508) 870-6027
fax: (508) 870-6670/(866) 223-0894
email: pat.gray@arch.com; mike.curd@arch.com

Scott Sawyer
Vice President of Regulatory Affairs & Counsel
Conversent Communications of Massachusetts, LLC
222 Richmond Street, Suite 301
Providence, RI 02903
phone: (401) 490-6377
email: ssawyer@conversent.com

Douglas A. Van Winkle
Regulatory/Contracts Administration Specialist
NEON Communications, Inc.
2200 West Park Drive
Westborough, MA 01571
phone: (508) 621-1727
fax: (508) 616-7895
email: dvanwinkle@neoninc.com

Michael S. Giaimo
Robinson & Cole LLP
One Boston Place
Boston, MA 02108-4404
phone: (617) 557-5959
fax: (617) 557-5999
email: mgiaimo@rc.com

Steven D. Strickland
General Counsel
SBC Telecom, Inc.
1010 N. St. Mary's St. #14J
San Antonio, TX 78215

Kristin L. Smith
Senior Attorney - Regulatory
Qwest Communications Corp.
1801 California Street, Suite 4700
Denver, CO 80202
phone: (303) 896-8143
fax: (303) 896-9994
email: kristin.smith@qwest.com

Lance JM Steinhart
Law Office of Lance JM Steinhart, PC
1720 Windward Concourse, Suite 250
phone: (770) 232-9200
fax: (770) 232-9208
email: lsteinhart@telecomcounsel.com

Jennifer Hassen
Freedom Ring Communications, LLC
359 Corporate Drive
Portsmouth, NH 03801
phone: (603 766-1000
fax: (603) 766-1050
email: jennifer@bayring.com

Christa M. Proper, Vice President
Richmond Connections Inc. d/b/a Richmond NetWorx
124 Fenn Street
Pittsfield, MA 01201
phone: (413) 447-3787
fax: (413) 445-4654
email: cproper@rnetworx.com

Richard C. Fipphen, Senior Counsel
Law and Public Policy, New York/New England Region
MCI
100 Park Avenue, 13th Floor
New York, NY 10017
phone: (212) 547-2602
fax: (212) 478-9202
email: richard.fipphen@mci.com

Harisha J. Bastiampillai
Russell M. Blau
Michael W. Fleming
Philip J. Macres
Swidler Berlin Shereff Friedman, LLP
The Washington Harbour
3000 K Street, NW, Suite 300
Washington, DC 20007-5116
phone: (202) 424-7869
fax: (202) 424-7643
email: hjbastiampillai@swidlaw.com; rmblau@swidlaw.com; mwfleming@swidlaw.com;

Genevieve Morelli
Erin Weber Emmott
Andrew M. Klein
Michael B. Hazzard
Heather T. Hendrickson
Kelly Drye & Warren LLP
1200 19th Street, NW, Suite 500
Washington, DC 20036
phone: (202) 955-9600
fax: (202) 955-9792
email: gmorelli@kelleydrye.com; eemmott@kelleydrye.com; mhazzard@kelleydrye.com; hhendrickson@kelleydrye.com

Thomas M. Koutsky
Vice President, Law and Public Policy
Z-Tel Communications, Inc.
1200 19th Street, NW, Suite 500
Washington DC 20036
phone: (202) 955-9652
email: tkoutsky@z-tel.com

Douglas S. Denny-Brown
General Counsel
RNK Inc. d/b/a RNK Telecom
333 Elm Street, Suite 310
Dedham, MA 02026
phone: (781) 297-9831
fax: (781) 297-9836
e-mail: dougdb@rnktel.com

E. Barlow Keener
BrahmaCom, Inc.
32 Wexford Street
Needham, MA 02494
phone: (781) 433-0333 x026
email: bkeener@brahmacom.com

Ken Duarte
Director of Carrier Relations and Regulatory Affairs
Volo Communications of Massachusetts, Inc.
151 S. Wymore Road., Suite 3000
Altamonte Springs, FL 32714-4254
phone: (407) 389-3232
fax: (407) 389-3233[1]
email: kduarte@volocommunications.com

Chris Van de Verg
General Counsel
CoreTel Massachusetts, Inc.
209 West Street, Suite 302
Annapolis, MD 21401
phone: (410) 216-9865
fax: (410) 216-9867
email: chris@coretel.net

Kevin Photiades
Regulatory & Compliance Manager
United Systems Access Telecom, Inc.
5 Bragdon Lane, Suite 200
Kennebunk, ME 04043-7262
phone: (207) 774-6859
fax: (207) 467-8008
email: kevinp@usacsp.com

Eric J. Krathwohl
Rich May, PC
176 Federal Street
Boston, MA 02110-2223
phone: (617) 556-3857
fax: (617) 556-3890
email: ekrathwohl@richmaylaw.com

Kenneth W. Salinger
Ruth T. Dowling
Palmer and Dodge LLP
111 Huntington Avenue
Boston, MA 02199
phone: (617) 239-0657
fax: (617) 227-4420
email: ksalinger@palmerdodge.com; rdowling@palmerdodge.com

Mable L. Semple UPD 4/15/04